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DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 103 and 208

[CIS No. 2481-09; DHS Docket No. USCIS-2009-0022]

RIN 1615-AB83

Immigration Benefits Business Transformation, Increment I; Correction

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: Correcting amendment.

SUMMARY: On August 29, 2011, the Department of Homeland Security (DHS) published a final rule to amend DHS regulations to enable U.S. Citizenship and Immigration Services (USCIS) to transform its business processes. In this notice, we are correcting three technical errors.

DATES: The effective date of this correcting amendment is [Insert date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Jason J. Johnsen, Office of Transformation Coordination, U.S. Citizenship and Immigration Services, Department of Homeland Security, 633 Third St., NW, Washington, DC 20529-2210; telephone (202) 233-2515.

SUPPLEMENTARY INFORMATION:

Background

On August 29, 2011, DHS issued a final rule titled, Immigration Benefits Business Transformation, Increment I, which amended more than fifty parts of title 8 of the Code of Federal Regulations and finalized seven interim rules. 76 FR 53764 (Aug. 29, 2011). The final rule removed form titles, number references, and position titles. It also removed obsolete and expired regulatory provisions and corrected provisions that were affected by statutory changes.¹

Need for correction

DHS amended 8 CFR in the final rule, wherever possible, to:

1. Remove references to official position titles used within DHS or used in the past by the former Immigration and Naturalization Service (INS). These titles include director, district director, and commissioner, as well as position descriptions, such as examiner or adjudicator. 76 FR 53764, 53767.

2. Replace references to the terms “application” and “petition” with the newly defined term “benefit request.” Id.

3. Remove information about internal processing, administrative filing requirements, filing locations, and procedures. Id.

DHS inadvertently neglected to revise the language in 8 CFR 103.2(b)(18) to reflect these changes. DHS is correcting that oversight by replacing individual job titles with “USCIS” in 8 CFR 103.2(b)(18). Delegations of authority to fulfill various

¹ In addition, before the rule took effect, DHS reviewed the public comments in the docket of this final rule and corrected several errors and omissions in a correction that was effective on the same date as the rule. 73 FR 73475 (Nov. 29, 2011) (effective Nov. 28, 2011).

responsibilities with respect to benefits requests are set forth in internal USCIS guidance. In addition, this correcting amendment replaces, “application or petition” with “benefit request.”

In addition, the August 2011 final rule amended the definition of “Service” to mean, “U.S. Citizenship and Immigration Services, U.S. Customs and Border Protection, and/or U.S. Immigration and Customs Enforcement, as appropriate in the context in which the term appears.” 76 FR 53764, 53780. Where a section of the regulations was determined to pertain to an action that may have been taken by INS, or a function that is within the purview of or shared with another component, the term “the Service” was retained or inserted. Id.

DHS made one erroneous amendment in the August 2011 final rule with regard to the use of “USCIS” in lieu of “the Service.” In 8 CFR part 208, the term “the Service” was revised to read “USCIS,” including in 8 CFR 208.24(f), which deals with the termination of asylum or withholding of deportation or removal by an Immigration Judge or the Board of Immigration Appeals. Termination of asylum is an authority shared between the Department of Justice and USCIS, but USCIS has no role in removal proceedings beyond the issuance of a notice to appear in accordance with 8 CFR 208.24(e) and (g). The current, recently-amended regulatory language incorrectly provides, however, that USCIS has the responsibility in removal proceedings to establish grounds of termination, whereas that is the responsibility of U.S. Immigration and Customs Enforcement. Therefore, this notice corrects that error by removing one incorrect reference to “USCIS” in 8 CFR 208.24(f) and replacing it with “the Service.”

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Immigration, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 208

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

Correction

Accordingly, for the reasons set out in the preamble, chapter I of title 8 of the Code of Federal Regulations is corrected by making the following correcting amendments:

PART 103—IMMIGRATION BENEFITS; BIOMETRIC REQUIREMENTS; AVAILABILITY OF RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1101, 1103, 1304, 1356, 1365b; 31 U.S.C. 9701; Pub. L. 107-296, 116 Stat. 2135 (6 U.S.C. 1 et seq.); E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

2. Section 103.2 is amended by revising paragraph (b)(18) to read as follows:

Subpart A—Applying for Benefits, Surety Bonds, Fees

§ 103.2 Submission and adjudication of benefit requests.

* * * * *

(b) * * *

(18) Withholding adjudication. USCIS may authorize withholding adjudication of a visa petition or other application if USCIS determines that an investigation has been

undertaken involving a matter relating to eligibility or the exercise of discretion, where applicable, in connection with the benefit request, and that the disclosure of information to the applicant or petitioner in connection with the adjudication of the benefit request would prejudice the ongoing investigation. If an investigation has been undertaken and has not been completed within one year of its inception, USCIS will review the matter and determine whether adjudication of the benefit request should be held in abeyance for six months or until the investigation is completed, whichever comes sooner. If, after six months of USCIS's determination, the investigation has not been completed, the matter will be reviewed again by USCIS and, if it concludes that more time is needed to complete the investigation, adjudication may be held in abeyance for up to another six months. If the investigation is not completed at the end of that time, USCIS may authorize that adjudication be held in abeyance for another six months. Thereafter, if USCIS determines it is necessary to continue to withhold adjudication pending completion of the investigation, it will review that determination every six months.

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PART 208—PROCEDURES FOR ASLYUM AND WITHHOLDING OF REMOVAL

3. The authority citation for part 208 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1158, 1226, 1252, 1282; Title VII of Public Law 110-229; 8 CFR part 2.

Subpart A—Asylum and Withholding of Removal

§ 208.24 [Corrected]

4. Section 208.24 is amended in paragraph (f), the second sentence, by removing the term “USCIS” and adding in its place the term, “the Service”.

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[FR Doc. 2013-08985 Filed 04/16/2013 at 8:45 am; Publication Date: 04/17/2013]